

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEARL J. MOODY and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

*Docket No. 01-1131; Submitted on the Record;
Issued February 19, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established disability commencing October 3 through 6, 2000 causally related to his employment injuries of November 14, 1999; and (2) whether appellant has more than a nine percent permanent impairment of his right upper extremity for which he received a schedule award.

On November 16, 1999 appellant, then a 46-year-old clerk (flat sorter), filed a traumatic injury claim for an incident on November 14, 1999 when he caught his foot on equipment webbing and fell, fracturing his right wrist. The Office of Workers' Compensation Programs accepted that appellant sustained a crushing injury to his wrist/hand and authorized a wrist arthroscopy. Appellant underwent a second surgery on December 29, 1999 for removal of an external fixator. Appellant was released to limited duty on February 24, 2000.

On October 6, 2000 appellant filed a claim for compensation from October 3 to 6, 2000.

In an October 16, 2000 medical report, Dr. Robert S. Humble, an orthopedic surgeon, noted that appellant had been working light duty since his injury. Examination of the right wrist revealed some mild swelling. Range of motion was noted as: extension 40 degrees, flexion 50 degrees, radial deviation 15 degrees and ulnar deviation 20 degrees. Grip strengths were 15 pounds on the right side and 65 pounds on the left side. Passive motion of the wrist revealed no crepitation. Appellant noted pain with the extremes of extension and flexion. Appellant was mildly tender over the dorsal aspect of his wrist. The x-ray demonstrated a healed die-punch fracture with some collapse. There appeared to be 10 to 20 degrees dorsal angulation of the die-punch fragment and evidence of post-traumatic arthritis. Dr. Humble diagnosed traumatic arthritis following intra-articular fracture distal radius. He advised that he did not recommend surgery unless absolutely necessary.

By letter dated October 23, 2000, the Office requested medical evidence establishing that appellant was disabled from work during the period claimed and afforded appellant 30 days, in which to obtain such evidence.

In a November 13, 2000 medical report, Dr. Humble advised that appellant had pain on range of motion as expected and significant post-traumatic degenerative joint disease of the wrist, which would eventually require surgical fusion. He advised that appellant had a 50 percent permanent impairment of his right wrist for effective loss of motion and use. Dr. Humble advised that appellant's work restrictions were based on the May 25, 2000 functional capacity evaluation and opined that appellant could either continue the job he is working or have the job his employer is developing for him. He noted that appellant needed to continue with pain medication and discharged him from his care.

By decision dated November 27, 2000, the Office determined that appellant was not entitled to wage-loss compensation from October 3 to 6, 2000.

On November 28, 2000 appellant filed a claim for a schedule award.

By report dated January 18, 2001, an Office medical adviser reviewed the figures provided by Dr. Humble in his October 16, 2000 report and consulted the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The medical adviser determined that, pursuant to page 36, Figure 26 of the A.M.A., *Guides*, a retention of dorsiflexion of 40 degrees equated to a 4 percent permanent impairment and a retention of palmar flexion of 50 degrees equated to a 2 percent permanent impairment. Pursuant to page 38, Figure 29 of the A.M.A., *Guides*, a retention of radial deviation of 15 degrees equated to a 1 percent permanent impairment and a retention of ulnar deviation of 20 degrees equated to a 2 percent permanent impairment. Adding the ratings together, the Office medical adviser determined that appellant had a nine percent permanent impairment of the right upper extremity.

In a decision dated January 29, 2001, the Office granted appellant a schedule award for a nine percent permanent impairment of his right upper extremity.

The Board finds that appellant has failed to meet his burden of proof in establishing that he was disabled from October 3 through 6, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² As part of this burden appellant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.³

In a September 25, 2000 report, Dr. Humble, an orthopedic surgeon and appellant's treating physician, stated that the x-rays revealed appellant's die-punch fragment had collapsed, but specifically advised appellant could return to the same job he was currently working. In an October 4, 2000 work status report, he advised that due to increased wrist pain, appellant was unable to work and perform duties Tuesday and Wednesday. In subsequent work status report of October 6, 2000, Dr. Humble stated due to increased pain in wrist, appellant was totally disabled until October 9, 2000. In an October 9, 2000 Form CA-20 report, he stated that appellant was advised to return to work with restrictions on June 8, 2000. Dr. Humble additionally noted that appellant's permanent restrictions were no repetitive movements with the right wrist; a one hour limit of pushing, pulling and lifting with a maximum 10 pound of lifting.

In this case, the medical evidence is not of sufficient probative value to meet appellant's burden of proof to establish compensation for wage loss on October 3 to 6, 2000. The Board notes Dr. Humble had diagnosed a collapsed die-punch fragment on September 25, 2000, but found appellant could go back to work. On status reports of October 4 and 6, 2000, he found that appellant could not work due to increased pain. These reports, however, are of insufficient probative value to establish disability for work on October 3 to 6 2000. Dr. Humble failed to provide any rationale, other than increasing pain and he does not attribute the inability to work to the collapsed die-punch fragment. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.⁴ Additionally, the Board notes that the work restrictions he issued on October 9, 2000 are the same as appellant's permanent restrictions, which were issued in June 2000.

The Board further finds that appellant has no more than a nine percent permanent impairment of the right upper extremity.

The schedule award provision of the Act⁵ and its implementing regulation⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

³ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁴ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

In this case, Dr. Humble provided measurements and a description of the impairment to appellant's right wrist but did not use the A.M.A., *Guides* to estimate permanent impairment. In his report dated November 13, 2000, Dr. Humble advised that appellant had a 50 percent permanent impairment but did not offer any values to support such an impairment or provide an explanation for appellant's "loss of motion and use."

The Board has held that when an attending physician's report gives an estimate of permanent impairment but is not based on a proper application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.⁷ The Board concludes that the Office medical adviser properly applied the A.M.A., *Guides* to the description of the impairment provided by Dr. Humble in his October 16, 2000 report. There is no evidence of record that appellant has more than a nine percent permanent loss of use of his right upper extremity for which he has received a schedule award.

The January 29, 2001 and November 27, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 19, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).